Vol. III. Numb. 88.

THE OBSERVATOR.

More Complaints againſt the Obſervator. *Of the Preſſing of Seamen for Sea Service. The Laws of our Anceſtors in that Affair*, &c.

From **Wednesday** February the 14th, to **Saturday** February the 17th, 1705.

Obſ. WELL, *Country-man*, now out with your other Complaints; what are they?

Country-m. The People ſay you are an Enemy to the Liberties of the Subject, and Freedoms of *Engliſhmen*, in ſaying, *It is Lawful to Preſs Mariners and Seamen for Sea Service.*

Obſ. I would have thoſe People that ſay ſo, do but half ſo much for the Liberties and Conſtitution of *England* as I have done, and then I'll Thank 'em. I don't know from whence the Complaints ariſe, concerning the Illegality of the Preſs; but, ſince it is the Subject matter of Diſcourſe in moſt Coffee-Houſes, as alſo the Theme of Weekly Papers, and tho' I have not the leaſt Reaſon to Juſtifie the Proceedings of the Wiſdom of the Admiralty, they being Perſons of ſuch Eminence in Learning and Knowledge of the Laws Marine, it ſeems I am forc'd to Juſtifie this Point in my own Vindication; which I ſhall do as ſuccinctly as the Subject will bear; but with this Salvo, that now I ſpeak only to Men of Sence, and not to Scribblers, that underſtand nothing of our Laws.

Now, to ſet this in a Caſe of true Light, we muſt a little conſider what Service 'tis we Preſs Men for? And what the Men are that are Preſt for that Service? The firſt is for the Defence of the Empire of the Sea, which is undeniably a Right of the Crown of *England*; and the People Preſs'd for this Service, are ſuch as are by Law obliged to it.

This has been a Right almoſt from the Peopling of this Iſland, and certainly ever ſince Navigation was received among us: The Mighty *Arthur* carried his Squadrons as far as *Iceland*, and made the Northern People acknowledge his Soveraignty, even from the *Engliſh* as far as the *Ruſſian* Shores. His Succeſſor, *Edgar*, kept the Empire of the Ocean entire; and the Tribute of *Danegelt*, in his Time, is Memorable upon that Account. Nor did his Succeſſors, *Canutus*, *Egbert*, *Athelred*, *Ethelfred* quit any part of this Empire, but Aſſumed the Soveraignty thereof, under no Lower Title, than *Supream Lords and Governours of the Ocean, ſurrounding the* Britiſh *Shores.*

And, after the Settlement of the *Norman* Race, we don't find that any of our Kings did quit their Right to the Soveraignty of the Sea, notwithſtanding many Claims were made to it; as appears by the Agreement made between *Edward* the Firſt, and the *French* King, *Philip the Fair*. *Coke* 4. Inſt. Fol. 142. The Submiſſion of the *Flemmings*, in open Parliament, in the Reign of *Edward* the Second, is alſo Memorable. The Right of the Flag was, above 400 Years ago, Challenged by King *John*, in that Memorable Ordinance at *Haſtings*; there Decreed Univerſally to take Place, not as a Civility, but as a Right, and whoever ſhould refuſe, to be Treated as Enemies. I could ſay much more of the Claims of our Anceſtors to the Empire of the Sea, which Soveraignty they maintained equally with their Hereditary Lands, and that from true Principles of Policy; for, as *Cicero* ſays, *Qui Mare tenet eum, neceſſe eſſe rerum Potiri.* He that is Maſter of the Sea Commands every thing.

Now as the Rights of the Crown are in a great Meaſure the Rights of the People, I mean of a mix'd Monarchy as *England* is, the People ought to Defend that Right; for the Prerogatives of the Crown and the Liberties of the People are ſo interwoven by Threads of Joint Intereſt, that one, in Right of himſelf, is bound to Support the Right of the other; as in this Caſe, the *French* King, at this time, Diſputes the Soveraignty of the Sea with the Queen of *England*; if Her Majeſty Loſes Her Empire of the Sea, the Subjects, of Courſe, muſt Loſe their Right of Trade, and the Benefit of their Factories and Plantations Abroad; and pray how ſhall theſe two Intereſts be ſupported, but by the Mutual Aſſiſtance of the Parties concerned?

But to come to the Point with thoſe that affirm Preſſing of Men is contrary to Law. If it be according to Law to Preſs Veſſels or Ships of what Nature or Nation ſoever, that ſhall be found Riding in the Ports or Havens of any Prince or State; certainly ſuch a Preſs is much more Lawful, when it is Executed on the Subjects of the ſame Realm; for this does not Diveſt the Owners of their Property, they have the ſame Intereſt in their Ships, and are Paid Wages and Freight, according to 23 *Ed.* 7. *Rot.* 77. in the Exchequer. And thus the *Grecians*, by the Advice of *Zenophon* Seized on Ships of all Nations that were in their Ports, but provided Food and Wages for the Marriners in the Service, *De Expeditione Cyri.*

The Laws of our Anceſtors did allow the King to Seize, as appears by more Records than we can mention at preſent. It was one of the Articles of Enquiry among others, Item, *Soit in quis de Neifs qui Sont Arreſtez pour le Service du Roy ou de l' Admiral, & debreiſant le Arreſte.* Then follows, *Ordonne eſtoit en temps du Roy* Richard *le primier a* Grimsby *par adviſe de Pluſieurs Seigneurs du Royaume, que quand Neifs ſeront Arreſtez*, &c. and that upon ſuch Arreſts broken the Parties muſt be Puniſhed, 12 *Edw.* 3. in the Black-Book of the Admiralty. *pag.* 26, 27. 17. 11. R. 2. *m. vide de Offic. Admiral Angliæ, per Roughton. Art.* 10.

If the Admiral, by the Kings Command, did Arreſt a Ship, and make a Return thereof into *Chancery*, no Maſter or Owner of the Ship ſo Arreſted, was allowed to Plead againſt the Return, *pur ceo que l' Admiral & ſon Lieutenant Sont de Record.*

And

And if a Ship break the Arreſt, and if the Maſter or Owner thereof be Convicted before the Admiral *devant l'Admiral*, the Ship ſhall be Confiſcated to the King; and this ſeems to be provided for in the latter Clauſe of 15th *R.* 2 cap. 3.

In the General Council, held by King *Ethelred*, called the Council of *Exham*, *An.* 1509, for the ſetting out of a Fleet every Year, you find the Penalties on Deſerters; the whole is too large to mention, but the Learned and Curious may be ſatisfied out of Sir *Henry Spelman's* Verſion of the *Saxon* Copy; but the Antient Copy hath it more largely. *Spelmani* Fol. 528. *Expeditio Navalis.*

The Kings of *England*, in all Ages, have, by their Writs and Patents, Commanded, not only the *Admiral*, but the *Wardens of the Cinque-Ports* to Arreſt Ships of War and other Veſſels, and Impreſs Seamen and Marriners, for the Defence of the Sea and Realm againſt Foreign Enemies. *Rot.* Scotiæ 10 E. 3. *m.* 2. to 17. and then to 34 *intus & dors* to 28. But Marriners or Fiſhermen thus Preſs'd, are not to be Employ'd in any Service as Soldiers but as Marriners only, 1 *Eliz.* cap. 13. *vide* Stat. 16. 17. *Car.* 1. c. 15.

And ſo diligent have former Ages been in Securing of Men for the Service of the Navy, that it is Statuted and Ordained, that ſuch Watermen as ſhall withdraw themſelves in Time of Preſſing, ſhall be Impriſoned for a Fortnight, and be Prohibited to Row on the *Thames*. 2 and 3. *Phil.* and *M. C.* 16.

Such as have Argued beſt againſt the Kings Preſſing Men for the Wars, have brought this as Objection, That other Proviſion has been made, that he was ſerved either by thoſe that held by Tenure, thoſe that Covenanted to provide Men, or thoſe who Contracted with the Kings Officers for Wages, and enter'd into Pay. But this only extended to thoſe Wars that were by Land. *Vide the firſt Inſtitutes. Fol.* 71. and not one Word in all the *Acts* or *Rolls*, do make the leaſt mention of Marriners; and yet what vaſt Fleets were there in thoſe days? But the Act made *Anno* 12. *Car* 2. for taking away the Court of Wards and Liveries, and Tenures in *Capite*, and by Knights Service, having Diſabled the Crown from former Supports. We cannot be unſenſible that ſome other Proviſion muſt have been made for the Support of the Crown and Realm, in lieu thereof.

But my Point is the Sea Service. The Statute before-mentioned, which provides Puniſhment for Watermen, who abſcond from the Preſs, does Evidence what the common Law was to the Right of Preſſing, which certainly would Puniſh thoſe they could not Preſs. Of the Antient Records that mentions Perſons ſubject to Preſs by Law, I ſhall only Inſtance that of 49. *E.* 3. commonly call'd *The Inquiſition of* Queenborough. 2 *April.* in the Black-Book of the Admiralty. 32, 33, 34 *Art.* and *Fol.* 69. *Art.* 10. wherein it was expreſly in Charge, to enquire of thoſe Marriners that were Preſſed in the Kings Service, and had Deſerted the ſame. By the other Article by *Roughton*, it is expreſs in Charge to the Jury to preſent thoſe that brake the Kings Arreſt, in order to their Puniſhment. In Evidence whereof I'll give you the Oath which the Jury then took, being Impannell'd, as I find it in the *Engliſh* of that time.

This here, ſee my Lord the Admiral, That I A B ſhall well and truly enquire for our Lord the King, and well and truly at this Time, then ſerve at this Court of the Admiralty, preſent at moch as I have acknowleche, or may have, by Information of eny of my Fellows, of all mane Articles or Circumſtances that touchen the Court of the Admirate and Law of the Sea, the which ſhall be grate to me at this time; and I thereupon Sworn or Charged, and of all ther that may renew in my Minde, and it ſhall for nothing lette, that is to ſay, for Franchiſe, Lordſhip, Kinreden, Alliance, Friendſhip, Love, Hatred, Envye, Enemitee, for dread of loſt of Goodnee, for none other Cauſe that I ſhall ſo do, the Kings Counſeils, my Fellows, mine owne, will and truly hele what oute Fraude or Malengre; ſo God me help at the Holy-Dome, and by this Book.

The Enquiry was not more ſtrict than the Puniſhment was great. *Item, Qui fugiet a Domino vel Socio ſuo pro Timiditate Belli, vel Actis in Conductione Herotechij ſui in Expeditione Navali vel Terreſtri, perdat Omne quod ſuum eſt, & ſuam ipſius vitam, manus mittat Dominus ad terram quam ei antea dederat.* He that Deſerted his Admiral loſt not only his Inheritance, his Goods, and Chattels, but his Life alſo. *Lamb. inter Lege Edovardi Fol.* 139. 13. *Car.* 2. *cap.* 9.

I could be very large on this Subject againſt thoſe that affirm we have no Laws, nor can have any Laws for Preſſing of Seamen, it being contrary to *Magna Charta*. I remember in the late Reign I Wrote a whole Tract, being Notes on the 18th Chapter of *Magna Charta*, wherein I plainly prov'd that the then Abuſes of the Sailors were contrary to the Rights of *Engliſhmen*, and for this I was then Aſpers'd by the very ſame Perſons that Reflect upon me now: For my part, I think the Abuſions of Equity and Juſtice are the ſame in all Reigns; but I am certain the Liberties of *Engliſhmen* are ſo, and thoſe that take the Liberty to Reflect on the Illegality of Preſſing Men for Sea Service, overlook their other Abuſes, which ſeems to me as if this preſent Cavil was deſigned on purpoſe to ſerve a Turn; and that now we are on the mending hand, in our Naval Affairs, and have good Admirals, we ſhould want Seamen to enable 'em to Anſwer the Expectations of the Kingdom from their Service.

I have ſhown you in Part, Honeſt *Country-man*, the Methods and Laws of our Fore-Fathers, in Equipping the Navy; I ſhall, in due time, tell you what may be done as well as what has been done, as alſo the true Reaſons why we want Seamen, and that not without ſome Reflections on the Abuſes of Preſſing Men for Sea Service, according to my Obſervations for 17 Years laſt paſt. And who knows but it may procure ſome good Act for the Regulating the Office of Lord High Admiral, for which I have Solicited both Houſes of Parliament for about 10 Years laſt paſt. However, if I Vindicate my ſelf, and open the Eyes of the People in this Point, I have one part of my Aim.

Country-m. Well, Maſter, God bleſs you, you have ever been a Friend to the Sailors.

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